

ST 07-18

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

DEPARTMENT OF REVENUE) 00 ST 0000
STATE OF ILLINOIS)
)
v.) Julie-April Montgomery
) Administrative Law Judge
ABC ACADEMY)

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Jane Doe (President) and Mr. John Doe (Board Member) for ABC Academy; John Alshuler, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

This matter comes on for hearing pursuant to the protest and request for hearing filed by ABC Academy (“Applicant”) following the denial by the Illinois Department of Revenue (“Department”) of Applicant’s second request for an exemption from the imposition of sales tax. The applicant claims that it is entitled to such an exemption as it is organized and operated exclusively for educational purposes. Ms. Jane Doe (“Jane Doe”), Applicant’s board president, submitted documents and testified on behalf of Applicant. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support thereof, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. The Department denied, a second time, Applicant's application for a tax exemption number under §1g of the Retailers' Occupation Tax Act ("ROT" and "ROTA"), 35 ILCS 120/1 *et seq.* 35 ILCS 120/1g. Department Ex. No. 1
2. Applicant is exempt from the payment of federal income taxes pursuant to section 501(c)(3) of the Internal Revenue Code. Applicant Ex. No. 2 (Department of Treasury letter)
3. Applicant provides classes in the Polish language, culture, geography and religion every Saturday from 9 a.m. to 1 p.m.; Tr. pp. 14, 16, 17 (testimony of Jane Doe); Applicant Ex. Nos. 4, 5
4. Classes are for children from pre-school age through high school age. Tr. p. 13; Applicant Ex. No. 4
5. Applicant's foreign language program is recognized as meeting the standards for approval by the Illinois State Board of Education. Applicant Ex. No. 1 (Illinois State Board of Education letter, April 18, 2007); Applicant Ex. No. 2 (Illinois State Board of Education report, March 24, 2007)

Conclusions of Law:

In Illinois, the Use Tax Act (35 ILCS 105/1 *et seq.*) ("UTA") imposes a tax "upon the privilege of using in this State tangible personal property purchased at retail from a retailer...." 35 ILCS 105/3. This tax must be collected from the purchaser by a retailer and is commonly known as the "sales tax." *Id.* at 105/3-45.

There are exemptions to the imposition of the use tax and, specifically, the UTA provides in relevant part, that an exemption applies to “[P]ersonal property purchased by a governmental body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes....” *Id.* at 105/3-5 (4). This statutory provision is incorporated into the Retailers’ Occupation Tax Act (35 **ILCS** 120/1 *et seq.*) (“ROTA”) *via* UTA § 105/12. 35 **ILCS** 105/12.

The ROTA, likewise, provides exemptions for the imposition of the sales tax. In relevant part, there is an exemption for “[P]ersonal property sold to a governmental body, to a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes....” 35 **ILCS** 120/2-5 (11). An entity that qualifies under this statutory provision “shall make application to the Department for an exemption identification number.” *Id.* at 120/1g. It is under these provisions that Applicant seeks an exemption number from the Department as a corporation organized and operated exclusively for educational purposes.

The exemption for educational purposes is more fully defined in the UTA, in pertinent part as:

§ 2c. For purposes of this Act, a corporation, limited liability company, society, association, foundation or institution organized and operated exclusively for educational purposes shall include: all tax-supported public schools; private schools which offer systematic instruction in useful branches of learning by methods common to public schools and which compare favorably in their scope and intensity with the course of study presented in tax-supported schools....
35 **ILCS** 105/2c¹

In order to qualify for an educational purposes sales tax exemption, an entity must: 1) “offer a course of study which fits into the general scheme of education established by

¹ The identical provision is found in the ROTA at 35 **ILCS** 120/h.

the State”; and, 2) “the course of instruction must lessen the tax burden of the public by providing an education which would otherwise have to be furnished by the State.” Yale Club of Chicago v. Department of Revenue, 214 Ill. App. 3d 468, 474 (1st Dist. 1991) (citing Illinois College of Optometry v. Lorenz, 21 Ill. 2d 219, 221 (1961)).

In Illinois, elementary school districts are required by the Illinois School Code, 105 ILCS 5/1-1 (“School Code”), to teach a particular curriculum. See also 23 Ill. Adm. Code, sec. 1.420, 1.430 (Public School Instructional Program). For grades kindergarten through 8 (“K-8”),² Illinois public schools are mandated to instruct in the following areas:

- 1) Language arts, reading and other communication skills
- 2) Science
- 3) Mathematics
- 4) Social Studies, including Holocaust study, Black History, History of Women, Irish Famine History, United States History
- 5) Music
- 6) Art
- 7) Health Education
- 8) Physical Education, daily
- 9) Career Education-Awareness and Exploration
- 10) Safety Education
- 11) Conservation of Natural Resources
- 12) Effective methods for the prevention and avoidance of drug and substance abuse
- 13) American patriotism and the principles of representative government-American Declaration of Independence, the U.S. Constitution, the Illinois Constitution and the proper use and display of the American flag. No student is permitted to graduate to high school without passing a satisfactory examination on these particular subjects.

23 Ill. Adm. Code, sec. 1.430;³ 105 ILCS 5/27-1 *et seq.* (Courses of Instruction-Special Instruction).

² The School Code does not require pre-kindergarten education in the public school system.

³ Neither the School Code, nor the pertinent sections of the administrative code mandate the teaching of a foreign language at the K-8 level, therefore, it is reasonable to conclude that the instruction in language arts, reading and communication skills concerns education based upon the English language. See also 105 ILCS 5/27-2 (Instruction in all public elementary and secondary schools of the State shall be in the English language except in second language programs....”).

In the instant matter, Applicant provides instruction in the Polish language (Tr. p. 15) and includes instruction in Polish culture, geography and history (Tr. p.16). There is no legal requirement in Illinois that K-8 public school education include instruction in these subjects. For children of these grade levels, Applicant provides no instruction in science, mathematics or social studies as specified by Illinois law (105 ILCS 5/27-20.3, 20.4, 20.5, 20.6, 21), and no art, music, health education, physical education, safety education, drug education or education on the American Declaration of Independence, the U.S. and Illinois Constitutions. Thus, it is clear that for children who are age-appropriate for kindergarten through 8th grade, Applicant does not offer “a course of study that fits into the general scheme of education established by the State.” Yale Club of Chicago v. Department of Revenue, *supra* at 474. Further, since Applicant’s course of instruction centers on subjects that the State is not mandated to teach, and it offers no instruction in any area that the State must provide as public education, Applicant’s K-8 program does not “lessen the tax burden of the public by providing an education which would otherwise have to be furnished by the State.” *Id.*

With regard to high school level education, that is, grades 9 through 12, public schools must provide the following for students to receive a diploma:

- 1) Language Arts, 3 years emphasizing reading and writing skills and oral communication⁴
- 2) Mathematics, 2 years
- 3) Science, 1 year
- 4) Social Studies, of which 1 year must be history of the United States and/or American government
- 5) 1 year of: music or art or foreign language or vocational education
- 6) Health education

⁴ It is reasonable to conclude that this requirement is for skills involving the English language since there is a separate requirement (music or art or foreign language) that can be satisfied with one year of foreign language study.

- 7) Career education
- 8) Physical Education
- 9) Conservation of Natural Resources
- 10) Driver and Safety education
- 11) American patriotism and principles of representative government, the American Declaration of Independence, the U. S. and Illinois Constitutions, and proper use and display of the American flag; “No student shall receive a certificate of graduation without passing a satisfactory examination upon such subjects.”

23 Ill. Adm. Code, sec. 1.440; 105 ILCS 5/27-22 (Required high school courses)

This Applicant provides no instruction in science, mathematics or social studies and no art, music, health education, physical education, driver or safety education, drug education or education on the American Declaration of Independence, the U.S. and Illinois Constitutions, for any grade level. On the high school level, the State requires that its public school students satisfy one year of instruction in music or art or foreign language or vocational education. The only area in which Applicant offers any instruction in “a course of study which fits into a general scheme of education established by the State” (Yale Club of Chicago v. Department of Revenue, *supra* at 474) is in the one year foreign language requirement as children who successfully complete the equivalent of high school grades 9 through 12 of Polish language instruction receive public school foreign language credit.

The exemption that Applicant requests mandates that the entity must be organized and operating exclusively for educational purposes. The term “exclusively” has been determined to mean primary rather than secondary or incidental. People ex. rel. Nordlund v. Association of the Winnebago Home for the Aged, 40 Ill. 2d 91, 101 (1968). The only area in which this Applicant offers a course of instruction within the State’s

general education scheme and for which a public tax burden is lessened is for a single-year foreign language requirement on the high school level.

The benefit of this particular instruction is not sufficient to satisfy the primary educational purposes demanded of the tax exemption. First, the State high school foreign language requirement is satisfied with only one year of study, and it is only one subject out of at least 10 others that must be taught to satisfy minimum State education requirements. In addition, a public school need not offer instruction in a foreign language as public high school students can satisfy this subject area requirement by taking, instead, a year of art or music or vocational education. Furthermore, as stated before, at best, the fulfillment of this sole public school educational mandate is not Applicant's primary organizational or operational purpose since it avers to emphasize classes in "[e]thnic information, ethnic background" along with language, history and geography (Tr. p.16); and provide religious classes (Applicant Ex. No. 4). Only high school students may avail themselves of the one year foreign language requirement (while all elementary students would receive no such credit) mandated by the State but any additional years of Polish language study are not required by the State's mandated instruction. I conclude that Applicant's primary purpose is to teach the Polish language, culture and history. I also conclude that such subjects are simply not within the scope of Illinois' public school education program.

The well-settled law in Illinois regarding taxation exemption is that a statute granting exemption must be strictly construed in favor of taxation and against exemption. Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765, 771 (1st Dist. 2000). The exemption claimant has the burden of proving its entitlement clearly

and conclusively (id.) with all facts construed and debatable questions resolved in favor of taxation. Id. Applicant has not met its statutory burden to show by clear and convincing evidence that it is organized and operated exclusively for educational purposes pursuant to the criteria established by Illinois law. Yale Club of Chicago v. Department of Revenue, supra.

WHEREFORE, for the reasons stated above, it is recommended that the Department's second denial of a sales tax exemption number to the ABC Academy be affirmed.

September 10, 2007

Julie-April Montgomery
Administrative Law Judge